

## REMARKS

Claims 1-42, 56-67, and 69-103 are now pending in this application. Claims 69, 70-76, and 78-81 have been amended,<sup>2</sup> and Claims 85-103 have been added to provide Applicants with a more complete scope of protection.

Initially, Applicants filed an Information Disclosure Statement (IDS) in the U.S. Patent and Trademark Office (USPTO) on January 24, 2002, but have not yet received confirmation that the art cited in the IDS has been considered and made of record in this application. A copy of that IDS is enclosed for the Examiner's convenience, as is a copy of the Form PTO-1449 filed with the IDS. Applicants respectfully request that the Examiner consider and make of record the art cited in the IDS and return an initialed copy of the enclosed Form PTO-1449 as confirmation thereof.

The Office Action Summary attached to the Office Action states that Claims 1-42, 56-67, and 73 are allowed. The Examiner is sincerely thanked for that indication. However, Applicants note that the version of Claim 73 pending prior to the filing of this Amendment depended from Claim 43, which was canceled in the Amendment And Petition For Extension Of Time filed in the U.S. Patent and Trademark Office on March 28, 2001.

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<sup>2</sup> Claim 69 has been amended to recite that the electron source plate has a substrate, and to further define the recited housing in a separate paragraph. Claim 69 also has been amended to include the recitation of the fluorescent device plate in a separate paragraph, and to change "signal applier" to "voltage applier". Claim 73 has been rewritten in independent form as shown above. Claims 75 has been amended to change "electrodes" to "electrons", and Claims 70-72, 74, and 78-81 have been amended to depend from Claim 73. Also, Claim 76 has been amended to depend from Claim 74 only, and Claim 71 has been amended to change "the scanned" to "scanned ones of the". Claim 81 also has been amended to change "a substrate" to "the substrate".

In any event, Claims 73 has been amended herein, and now is in independent form. For reasons discussed below, that claim in its present form also is believed allowable.

Paragraph 2 of the Office Action states that Claim 75 is objected to owing to a spelling error in that claim. Claim 75 has been amended to correct that error, and thus the objection is believed overcome. The amendment to Claim 75 is believed to not affect the scope of that claim, and merely corrects the spelling error.

Claims 69-72 and 74-84 were rejected under 35 U.S.C. § 251 as allegedly being an improper recapture of "claimed subject matter deliberately canceled in the application for the patent upon which the present reissue is based." Paragraph 4 of the Office Action supports this rejection by asserting that "Claims 69-72, and 74-84 are directed to devices encompassing laminate electron sources", allegedly like Claims 67-95 canceled in the Amendment dated November 22, 1995 in Application No. 08/396,066. According to the Examiner's apparent reasoning, Claims 67-95 were deliberately canceled in Application No. 08/396,066 "to obviate the rejection . . . under the judicially created doctrine of obviousness-type double patenting as obvious over claims 1-38, and 40-49 of U.S. Patent No. 5,066,883 . . . in view of U.S. Patent No. 3,735,186 . . .", and thus subject matter directed to devices encompassing laminate electron sources allegedly was surrendered, and Applicants cannot now recapture that subject matter by presenting Claims 69-72 and 74-84 for examination. Applicants respectfully disagree with the Examiner's position for the reasons given below.

Independent Claim 69 recites a display apparatus comprising an electron source plate, having a substrate and a plurality of electron-emitting devices arranged in a

matrix of rows and columns on the substrate. The electron source plate also comprises a matrix configuration of row wires and column wires respectively corresponding to the rows and columns of the electron-emitting devices arranged in the matrix, a fluorescent device plate having a fluorescent layer and an acceleration electrode, and a housing. The housing has a structure adapted for maintaining a vacuumized condition in a space between the electron source plate and the fluorescent device plate, and at least a portion of the structure is formed by the electron source plate and the fluorescent device plate. The apparatus also comprises a voltage applier disposed outside of the housing, and arranged for applying (1) a scan signal to the row wires, (2) a modulation signal to the column wires, and (3) an acceleration voltage to the acceleration electrode to accelerate electrons emitted from the electron-emitting devices toward the fluorescent layer of the fluorescent device plate.

In a recent opinion, *Pannu vs. Storz Instruments, Inc.*, 258 F.3d 1366, 2001 U.S. App. LEXIS 16645 (Fed. Cir. 2001), the Court of Appeals for the Federal Circuit defined the recapture test as having three parts. The first part of the test is to determine whether and in what aspect the reissue claims are broader than the patent claims, the second part involves determining whether the broader aspects of the reissue claims relate to surrendered subject matter,<sup>3</sup> and the third part of the test is to determine whether the reissue claims were materially narrowed in other respects to avoid the recapture rule.<sup>4</sup>

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<sup>3</sup> *Id.* at 1371, \*\*9 ((quoting *In re Clement*, 131 F.3d 1464, 1468 (Fed. Cir. 1997) (quoting *Mentor Corp. v. Coloplast, Inc.*, 998 F.2d 992, 996 (Fed. Cir. 1993))).

<sup>4</sup> *Id.* (citing *Hester Indus., Inc. v. Stein, Inc.*, 142 F.3d 1472, 1482-83 (Fed. Cir. 1998) and *In re Clement*, 131 F.3d at 1470).

In the Office Action's comments supporting the Section 251 rejection, no assertion is made that Claim 69 (or any of the other rejected reissue claims) is broader in some respect relative to the original patent claims, and no broader aspect of any rejected reissue claim is identified. Instead, the Office Action asserts merely that "Claims 69-72, and 74-84 are directed to devices encompassing laminate electron sources". However, this reasoning appears irrelevant to the *Pannu* test. Moreover, Claim 69 does not recite explicitly a "*laminate* electron source", and thus it is not seen how that claim validly can be said to necessarily recapture that subject matter per se.

Furthermore, proper application of at least the third prong of the *Pannu* test in the present case demonstrates that Claim 69 does not improperly recapture previously surrendered subject matter, since that claim recites features that are materially narrowed in at least some respects to avoid the recapture rule. For example, the subject matter of the rejected reissue Claim 69 is materially more restrictive than that of Claims 67-95 (canceled in Application No. 08/396,066) in at least these respects -- Claim 69, both in its original form and as now amended, recites plural electron-emitting devices *arranged in a matrix of rows and columns, a matrix configuration of row wires and column wires, an applier arranged for applying (1) a scan signal to the row wires, (2) a modulation signal to the column wires, and (3) an acceleration voltage to an acceleration electrode*. In its presently amended form, Claim 69 also recites a *housing having a structure adapted for maintaining a vacuumized condition in a space between an electron source plate and a fluorescent device plate, wherein at least a portion of the structure is formed by the electron source plate and the fluorescent device plate* (emphasis added). Claims 67-95 canceled in

Application No. 08/396,066, on the other hand, recited merely a display device comprising, *inter alia*, a face plate, an electron-emitting device, and fluorescent members, wherein a plurality of the electron-emitting devices are mounted on a single plane, and did not require the above-emphasized features of Claim 69. Thus, to reject reissue Claim 69 based on prior art would require the Examiner to cite art which he believes teaches the above-emphasized features of that claim, whereas a prior art rejection of mentioned Claims 67-95 would not necessarily be based on art teaching those features. Indeed, the outstanding Office Action has not rejected reissue Claim 69 based on art which was cited to reject Claims 67-95 in Application No. 08/396,066, apparently since those latter claims did not recite at least the above-emphasized features of reissue Claim 69.

Accordingly, for the above reasons, Applicants respectfully submit that Claim 69 does not improperly recapture the subject matter of Claims 67-95 canceled in Application No. 08/396,066.

Added dependent Claims 100-103 depend from Claim 69, and therefore incorporate all of the features of Claim 69 therein. For substantially the same reasons as those given above in connection with Claim 69, Claims 100-103 also are believed to not improperly recapture the subject matter of Claims 67-95 canceled in Application No. 08/396,066.

With regard to Claims 70-72 and 74-84 rejected under Section 251, without conceding the propriety of the rejection of those claims, each claim has been amended to depend from base Claim 73, which now is in independent form. As amended, independent Claim 73 recites, at least in part, features that are substantially similar to those of Claim 69

emphasized above. For the same reasons as those given above in connection with Claim 69, Claim 73 also is believed to not improperly recapture the subject matter of Claims 67-95 canceled in Application No. 08/396,066. Claims 70-72 and 74-84, which depend from Claim 73, also are believed to not improperly recapture the subject matter of Claims 67-95 canceled in Application No. 08/396,066, for the same reasons, since those claims incorporate the features of Claim 73 therein.

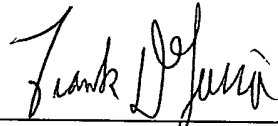
Independent Claim 85 has been added, and also recites features that are substantially similar to those of Claim 69 emphasized above. For substantially the same reasons as those given above in connection with Claim 69, Claim 85 also is believed to not improperly recapture the subject matter of Claims 67-95 canceled in Application No. 08/396,066. Claims 86-99 depend from Claim 85, and thus incorporate all of the recitations of Claim 85 therein, and also are believed to not improperly recapture the subject matter of Claims 67-95 canceled in Application No. 08/396,066, for the same reasons as is Claim 85.

This Amendment After Final Rejection is believed clearly to place this application in condition for allowance and its entry is therefore believed proper under 37 C.F.R. § 1.116. At the very least, however, it is believed that the formal objection has been overcome. In any event, however, entry of this Amendment After Final Rejection, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, he is respectfully requested to contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue.

In view of the foregoing comments, withdrawal of the objection and Section 251 rejection set forth in the Office Action, and early allowance of the present application, are respectfully requested.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,



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